

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GEORGE AVALOS,

Plaintiff,

v.

MARTHA FRANCO DE PIZANO, et al.,

Defendants.

Case No. 1:20-cv-01571-DAD-SAB

ORDER DISREGARDING STIPULATION
FOR DISMISSAL OF ENTIRE ACTION

(ECF No. 21)

FOURTEEN DAY DEADLINE

Plaintiff George Avalos filed this action against Defendants Martha Franco De Pizano, Baljit Singh, and Mohinder Kaur on November 6, 2020. (ECF No. 1.) On November 23, 2020, Defendant De Pizano filed an answer to the complaint. (ECF No. 5.) On December 14, 2020, Defendants Mohinder Kaur and Baljit Singh filed an answer. (ECF No. 11.)

On January 27, 2021, a notice of settlement was filed and the parties were ordered to file dispositional documents within thirty days of January 28, 2021. (ECF Nos. 16, 17.) On March 2, 2021, an order issued requiring the parties to show cause why sanctions should not issue for the failure to file dispositive documents in compliance with the January 28, 2021 order. (ECF No. 18.) On November 4, 2021, Defendants Kaur and Singh filed a response to the order to show cause and a stipulation for dismissal of the entire action was filed. (ECF Nos. 19-20, 21.) Plaintiff has not filed a response to the order to show cause.

Under Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, ‘a plaintiff has an

absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a motion for summary judgment.’ ” Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc., 193 F.3d 1074, 1077 (9th Cir. 1999) (quoting Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997)). Here, Defendants have filed an answer, so Plaintiff cannot voluntarily dismiss this action pursuant to Rule 41(a)(1)(A)(i).

Under Rule 41(a)(1)(A)(ii) a “plaintiff may dismiss an action without a court order by filing a stipulation of dismissal signed by all parties who have appeared.” Fed. R. Civ. P. 41(a)(1)(A)(ii). A party may also dismiss an action by filing a motion requesting the Court to dismiss the action. Fed. R. Civ. P. 41(a)(2). A motion for voluntary dismissal under Rule 41(a)(2) is addressed to the sound discretion of the district court. Hamilton v. Firestone Tire & Rubber Co. Inc., 679 F.2d 143, 145 (9th Cir. 1982).

The parties stipulation for dismissal of this action is defective under Rule 41(a) because it is not signed by Defendant De Pizano who has filed an answer in this action. Nor is it a motion under Rule 41(a)(2). To voluntarily dismiss this action, the parties are required to comply with the procedures set forth in Rule 41 by filing a stipulation that complies with Rule 41(a)(1)(A)(ii) or a motion under Rule 41(a)(2).

Accordingly, stipulation for dismissal of this entire action with prejudice is HEREBY DISREGARDED. The parties shall file a request for dismissal that complies with Rule 41 within **fourteen (14) days** from the date of entry of this order. Further, Plaintiff is advised that his response to the order to show cause is due on or before **March 8, 2021**.

IT IS SO ORDERED.

Dated: **March 4, 2021**


UNITED STATES MAGISTRATE JUDGE